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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Eligibility for the Specialized Mobile)
Radio Services and Radio Services)
in the 220-222 MHz Land Mobile)
Band and Use of Radio Dispatch)
Communications)
)

GN Docket No. 94-90

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FEDERAL COMMUNICATIONS COMMISSION
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To: The Commission

REPLY COMMENTS OF BELL SOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., and
BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby reply to
the Comments submitted in response to the Commission's *Notice of Proposed Rule
Making and Notice of Inquiry*, FCC 94-202 (Aug. 11, 1994), 59 Fed Reg. 42563 (1994)
("Notice"). In its comments, BellSouth supported the Commission's proposal to elimi-
nate the wireline ineligibility rules and common carrier dispatch prohibition. BellSouth
urges the Commission to eliminate these restrictions without delay.

I. SUMMARY

Twenty nine parties submitted comments in this proceeding. Signifi-
cantly, only one recently formed organization opposed the elimination of the rules
prohibiting wireline participation in the SMR field. Additionally, the majority of the
parties commenting on the issue supported the Commission's proposal to eliminate the

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prohibition on the provision of dispatch service by common carriers. Given the widespread support of the Commission's proposals, BellSouth again urges the Commission to eliminate the restrictions without delay.

II. DISCUSSION

A. WIRELINE ELIGIBILITY FOR SMR LICENSING

In the *Notice*, the Commission proposed to eliminate its rules prohibiting wireline telephone common carriers from providing SMR and 220-222 MHz services.¹ All but one of the parties commenting on this issue supported the Commission's proposal.²

¹ *Notice* at ¶ 15.

² *Compare* Comments of Industrial Telecommunications Association, Inc. and Council of Independent Communications Suppliers (collectively "ITA") at 3-4, The Rural Independents at 1-2, 5, American Mobile Telecommunications Association, Inc. ("AMTA") at 1, 5-8 (but supporting retention of the prohibition for 220-222 MHz services), Century Telephone Enterprises, Inc. ("Century") at 2, Sprint Corporation ("Sprint") at 2-3, Geotek Communications, Inc. ("Geotek") at 2, Pacific Bell, Nevada Bell, and Pacific Bell Mobile Services (collectively "Pacific Bell") at 3, Polar Communications Mutual Aid Corporation ("Polar") at 2, 7-8, Puerto Rico Telephone Company ("PRTC") at 3, East Otter Tail Telephone Company ("East Otter") at 1, National Association of Business and Educational Radio ("NABER") at 4, SNET Mobility at 5, Bell Atlantic Mobile Systems, Inc. ("Bell Atlantic") at 4, GTE Service Corporation ("GTE") at 5-6, RAM Mobile Data USA Limited Partnership ("RAM Mobile Data") at 2, Southwestern Bell Corporation ("Southwestern") at 6, Rochester Tel Cellular Holding Corporation ("Rochester") at 2, United States Telephone Association ("USTA") at 2, Nextel Communications, Inc. ("Nextel") at 4-5, Telephone and Data Systems, Inc. ("TDS") at 3-5, Cellular Telecommunications Industry Association ("CTIA") at 7, 9; *with* Comments of SMR WON at 6-8.

Most parties supporting elimination of the wireline restriction felt that removal of the restriction was required to achieve regulatory parity.³ Even the Industrial Telecommunications Association, Inc., which enjoys a membership of over 8,600 private land mobile radio communications licensees, stated that the restriction is an “anomaly in the current environment”⁴ and should be removed in light of the Congressional mandate to create regulatory parity.⁵ Ironically, the only party opposing removal of the restriction did not address this mandate.⁶

In addition, most parties opposed the imposition of additional restrictions to protect against the mere possibility of discriminatory practices or abuses by wireline telephone companies.⁷ According to the American Mobile Telecommunications Association, Inc., enforcement of current regulations is sufficient to protect against possible abuses by wireline telephone companies in the SMR marketplace.⁸ In fact, AMTA felt

³ See Comments of ITA at 4, Sprint at 3-4, Polar at 7-8, Bell Atlantic at 4, GTE at 5, RAM Mobile Data at 2, Rochester at 2, USTA at 2, CTIA at 7.

⁴ ITA Comments at 4.

⁵ ITA Comments at 3-4.

⁶ See Comments of SMR WON.

⁷ See Comments of The Rural Independents at 6-7, AMTA at 8 (regarding SMR services), Century at 7, Sprint at 4, Pacific Bell at 3, Polar at 9-11, PRTC at 4-5, East Otter at 6, SNET Mobility at 6-7, RAM Mobile Data at 3, Southwestern at 6, USTA at 3, Nextel at 5, TDS at 5-6, CTIA at 13.

⁸ AMTA Comments at 8.

that wireline entry could enhance, rather than hurt, competition in the SMR industry.⁹

BellSouth concurs.

Virtually all parties supported elimination of the wireline restrictions and most commenters, including SMR associations, felt that additional regulatory safeguards are unnecessary. Accordingly, BellSouth urges the Commission to eliminate these restrictions without delay.

B. PROVISION OF DISPATCH SERVICES BY COMMON CARRIERS, INCLUDING CELLULAR CARRIERS

In its comments, BellSouth supported the Commission's proposal to eliminate the prohibition on the provision of dispatch services by common carriers.¹⁰

Seventeen other parties also supported elimination of the common carrier dispatch prohibition¹¹ and only six parties supported its retention.¹² Many of the parties supporting elimination of the prohibition felt that regulatory parity requires that it be lifted.¹³

⁹ *Id.* at 6.

¹⁰ Comments of BellSouth at 15-16.

¹¹ Comments of McCaw Cellular Communications, Inc. ("McCaw") at 1-2; Century at 10; Polar at 11; Sprint at 2-3; Personal Communications Industry Association ("PCIA") at 1; Rural Cellular Association at 3; ALLTEL Mobile Communications, Inc. ("ALLTEL") at 2-4; East Otter at 6-7; SNET Mobility at 8; Bell Atlantic at 5-6; GTE at 7; Southwestern at 7; Rochester at 3; USTA at 1, 3-4; Nextel at 6-7 (supporting elimination at the end of the PMRS to CMRS transition period); TDS at 7; CTIA at 4-7.

¹² Comments of ITA at 5-6; AMTA at 10-11; SMR WON at ii, 19-20, 22; Geotek at 3; NABER at 4-5; E.F. Johnson Company at 2-3.

¹³ *See* Comments of PCIA at 1, Polar at 11, ALLTEL at 2-3, East Otter at 6-7, Bell Atlantic at 6, GTE at 7, Southwestern at 7, CTIA at 4-6.

BellSouth agrees. Since SMR providers can compete directly with cellular providers, both providers should be able to offer the same panoply of services in order to establish regulatory parity.¹⁴ Allowing SMR providers and not cellular providers to provide dispatch is inconsistent with this principle, whereas allowing all competing providers to provide the same types of services will further regulatory parity by enhancing competition, providing consumers with expanded choices, and ultimately resulting in lower prices. Moreover, unless the Commission eliminates the ban, all dispatch services offered by interconnected SMRs would have to be terminated once these SMRs are reclassified as CMRS, because such reclassification will result in these SMRs being treated as common carriers.

Some common carriers, such as cellular licensees, are now permitted to provide a service similar to dispatch service.¹⁵ Cellular carriers should have "the same flexibility to use their spectrum to meet their customers' needs that the Commission's rules afford SMR and ESMR licensees."¹⁶ Virtually the only difference is that cellular providers can not provide direct dispatcher to end-user communication without utilizing

¹⁴ See Comments of Southwestern at 7.

¹⁵ While the term "dispatch service" has been used in the private land mobile context to mean non-interconnected service, there is no definition of the term in Part 90. Under Part 22, the "dispatch service" prohibition does not apply to non-interconnected service. The rules define dispatch service as being brief two-way voice communications between a dispatcher and a mobile "without passing through the mobile telephone switching facilities." 47 C.F.R. § 22.2. Thus, dispatch-type services that pass through a cellular switch are currently permitted under Part 22. See Notice at ¶ 12 & n.48; 47 C.F.R. § 22.930; see also Comments of CTIA at 4-5.

¹⁶ Comments of CTIA at 5.

the cellular switch. There is no reason to retain this technical distinction. As one party noted, the prohibition was adopted to ensure the availability of common carrier services.¹⁷ Given the technical developments which have improved spectral efficiency and the rapid development of common carrier services, there is no threat that common carrier participation in dispatch will limit the availability of common carrier services.¹⁸

BellSouth supports the assertion that the prohibition has artificially restricted competition.¹⁹ This is precisely what the Commission is now trying to prevent.²⁰ As the Commission has noted, "the marketplace -- and not the regulatory arena -- [should] shape[] the development and delivery of mobile services."²¹ By allowing common carriers to provide dispatch services, competition will increase, consumer choice will be enhanced, and the quality of services will improve.²² Given that all interconnected SMR providers will be characterized as CMRS pursuant to the Budget Act, retention of the prohibition will actually diminish competition because these SMR providers will no longer be permitted to provide dispatch service. By allowing common carriers to provide dispatch service, the dispatch services offered by these SMR carriers

¹⁷ Comments of Bell Atlantic at 5.

¹⁸ *See Id.*

¹⁹ Comments of ALLTEL at 3-4.

²⁰ *See Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, FCC 92-212 at ¶ 23 (released September 23, 1994); *see also* Comments of BellSouth at 11-12; CTIA at 4.

²¹ *Id.*; *see also* Comments of BellSouth at 11-12.

²² *See* Comments of ALLTEL at 3-4, Bell Atlantic at 6, Southwestern Bell at 7.

can continue without interruption and other common carriers can begin providing such services. Moreover, as parties noted, the current restriction has effectively prevented the offering of dispatch services to many rural subscribers.²³ Removal of the prohibition will expedite the provision of dispatch services to these consumers.

The purpose of regulatory parity is to facilitate competition, not to protect a particular group of competitors. Regulatory parity simply requires that similar services must be subject to like regulation. Thus, the Commission should not base its decision on removing the restrictions on whether all available channels have been licensed.²⁴ Such suggestions clearly seek to protect specific competitors from competition contrary to the public interest. As the dispatch marketplace has had twenty years to develop and is now mature and competitive, there is no reason to prohibit additional competitors from entering the marketplace while frequencies are still available.

Finally, BellSouth agrees that additional regulatory safeguards are unnecessary if the dispatch prohibition is eliminated.²⁵ The Commission decided to refrain from imposing additional safeguards on Part 22 licensees providing PCS services; it does not make sense to impose such safeguards in a mature industry that has had twenty years to develop. Should anticompetitive behavior develop, the Commission has the necessary tools to remedy the situation and, at a minimum, could initiate a new rulemaking to address the problem.

²³ See Comments of the Rural Cellular Association at 3; East Otter at 6.

²⁴ Compare Comments of Nextel at 4 with Nextel at 7.

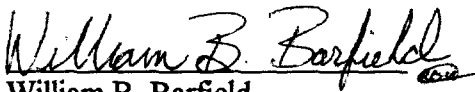
²⁵ See Comments of McCaw at 3-4; Rochester Telephone Company at 3; Rural Cellular Association at 5.

III. CONCLUSION

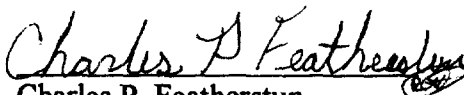
Based on the vast majority of the comments submitted in this proceeding and consistent with its comments, BellSouth supports the Commission's proposals to eliminate the restrictions on wireline eligibility for SMR licenses and the prohibition on the provision of dispatch service by common carriers, and urges the Commission to take its proposed actions without delay.

Respectfully submitted,

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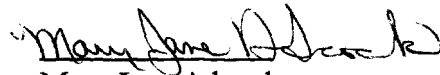
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